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ART UNIT	**PAPER NUMBER**
2121	6

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/710,488	WONG ET AL.
	Examiner	Art Unit
	Wilbert L. Starks, Jr.	2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *10 November 2000*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 U.S.C. § 101

1. 35 U.S.C. §101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the invention as disclosed in claims 1-15 is directed to non-statutory subject matter.

2. Claims 1-15 are not claimed to be practiced on a computer, therefore, it is clear that the claims are not limited to practice in the technological arts. On that basis alone, they are clearly nonstatutory.

3. Regardless of whether any of the claims are in the technological arts, none of them is limited to practical applications in the technological arts. Examiner finds that *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994) controls the 35 USC §101 issues on that point for reasons made clear by the Federal Circuit in *AT&T Corp. v. Excel Communications, Inc.*, 50 USPQ2d 1447 (Fed. Cir. 1999). Specifically, the Federal Circuit held that the act of:

> ...[T]aking several abstract ideas and manipulating them together adds nothing to the basic equation. *AT&T v. Excel* at 1453 quoting *In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994).

Examiner finds that Applicant's "issues to be resolved" references are just such abstract ideas.

4. Examiner bases his position upon guidance provided by the Federal Circuit in *In re Warmerdam*, as interpreted by *AT&T v. Excel*. This set of precedents is within the same line of cases as the *Alappat-State Street Bank* decisions and is in complete agreement with those decisions. *Warmerdam* is consistent with *State Street*'s holding that:

> Today we hold that *the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price*, constitutes a practical application of a mathematical algorithm, formula, or calculation because it produces 'a useful, concrete and tangible result" – *a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades*. (emphasis added) *State Street Bank* at 1601.

5. True enough, that case later eliminated the "business method exception" in order to show that business methods were not per se nonstatutory, but the court clearly *did not* go so far as to make business methods *per se statutory*. A plain reading of the excerpt above shows that the Court was *very specific* in its definition of the new *practical application*. It would have been much easier for the court to say that "business methods were per se statutory" than it was to define the practical application in the case as "...the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price..."

6. The court was being very specific.

7. Additionally, the court was also careful to specify that the "useful, concrete and tangible result" it found was "a final share price momentarily fixed for recording purposes and even accepted and relied upon by regulatory authorities and in subsequent trades." (i.e. the trading activity is the further practical use of the real world monetary data beyond the transformation in the computer – i.e., "post-processing activity".)

8. Applicant cites no such specific results to define a useful, concrete and tangible result. Neither does Applicant specify the associated practical application with the kind of specificity the Federal Circuit used.

9. Furthermore, in the case *In re Warmerdam*, the Federal Circuit held that:

> ...[T]he dispositive issue for assessing compliance with Section 101 in this case is whether the claim is for a process that goes beyond simply manipulating 'abstract ideas' or 'natural phenomena' ... As the Supreme Court has made clear, '[a]n idea of itself is not patentable, ... *taking several abstract ideas and manipulating them together adds nothing to the basic equation*. In re Warmerdam 31 USPQ2d at 1759 (emphasis added).

10. Since the Federal Circuit held in *Warmerdam* that this is the "dispositive issue" when it judged the usefulness, concreteness, and tangibility of the claim limitations in that case, Examiner in the present case views this holding as the dispositive issue for determining whether a claim is "useful, concrete, and tangible" in similar cases. Accordingly, the Examiner finds that Applicant manipulated a set of abstract "issues to be resolved" to solve purely algorithmic problems in the abstract (i.e., what *kind* of "issues" are to be resolved? Algebraic word problems? Boolean logic problems? Fuzzy logic algorithms? Probabilistic word problems? Philosophical ideas? Even vague expressions, about which even reasonable persons could differ as to their meaning? Combinations thereof?) Clearly, a claim for manipulation of "issues to be resolved" is provably even more abstract (and thereby less limited in practical application) than pure "mathematical algorithms" which the Supreme Court has held are per se nonstatutory – in fact, it *includes* the expression of nonstatutory mathematical algorithms.

11. Since the claims are not limited to exclude such abstractions, the broadest reasonable interpretation of the claim limitations includes such abstractions. Therefore, the claims are impermissibly abstract under 35 U.S.C. 101 doctrine.

12. Since *Warmerdam* is within the *Alappat-State Street Bank* line of cases, it takes the same view of "useful, concrete, and tangible" the Federal Circuit applied in *State Street Bank*. Therefore, under *State Street Bank*, this could not be a "useful, concrete and tangible result". There is only manipulation of abstract ideas.

13. The Federal Circuit validated the use of *Warmerdam* in its more recent *AT&T Corp. v. Excel Communications, Inc.* decision. The Court reminded us that:

> Finally, **the decision in In re Warmerdam**, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994) **is not to the contrary**. *** The court found that the claimed process did nothing more than manipulate basic mathematical constructs and concluded that **'taking several abstract ideas and manipulating them together adds nothing to the basic equation'**; hence, the court held that the claims were properly rejected under §101 ... Whether one agrees with the court's conclusion on the facts, **the holding** of the case is a straightforward application of the basic principle that mere laws of nature, natural phenomena, and abstract ideas are not within the categories of inventions or discoveries that may be patented under §101. (emphasis added) AT&T Corp. v. Excel Communications, Inc., 50 USPQ2d 1447, 1453 (Fed. Cir. 1999).

14. Remember that in *In re Warmerdam*, the Court said that this was the dispositive issue to be considered. In the *AT&T* decision cited above, the Court reaffirms that this is the issue for assessing the "useful, concrete, and tangible" nature of a set of claims under 101 doctrine. Accordingly, Examiner views the *Warmerdam* holding as the dispositive issue in this analogous case.

15. The fact that the invention is merely the manipulation of *abstract ideas* is clear. The data referred to by Applicant's phrase "issues to be resolved" is simply an abstract construct that does not limit the claims to the transformation of real world data (such as monetary data or heart rhythm data) by some disclosed process. Consequently, the necessary conclusion under *AT&T*, *State Street* and *Warmerdam,* is straightforward

and clear. The claims take several abstract ideas (i.e., "issues to be resolved" in the abstract) and manipulate them together adding nothing to the basic equation. Claims 1-15 are, thereby, rejected under 35 U.S.C. 101.

16. Regarding the "system" recitals in claims 1 – 2, the invention is still found to be nonstatutory. Any other finding would be at variance with current case law. Specifically, the Federal Circuit held in *AT&T v. Excel*, 50 USPQ2d 1447 (Fed. Cir. 1999) that:

> Whether stated implicitly or explicitly, we consider the scope of Section 101 to be **the same regardless of the form** – machine or process – in which a particular claim is drafted. AT&T v. Excel, 50 USPQ2d 1447, 1452 citing In re Alappat, 33 F.3d at 1581, 31 USPQ2d at 1589 (Rader, J., concurring) (emphasis added.)

17. Examiner considers the scope of Section 101 to be the same regardless of whether Applicant *claims* a "process" or "machine". While the "system" recitals in the preambles of claims 1 - 2 make the claims ostensibly drawn to be "apparatus" claims, they are insufficient by themselves to limit the claims to statutory subject matter. Examiner's position is clearly consistent with *Alappat,* and *AT&T* and is implicitly consistent with *Warmerdam* and *State Street*. Accordingly, those claims are also properly rejected.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-15 are rejected under 35 USC 112, first paragraph because current case law (and accordingly, the MPEP) require such a rejection if a 101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a matter of law there is no way Applicant could have disclosed *how* to practice the *undisclosed* practical application. This is how the MPEP puts it:

> ("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. 101 that the specification disclose as a matter of fact a practical utility for the invention.... If the application fails as a matter of fact to satisfy 35 U.S.C. § 101, then the application **also fails as a matter of law** to enable one of ordinary skill in the art to use the invention under 35 U.S.C. § 112."); In re Kirk, 376 F.2d 936, 942, 153 USPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with § 112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless invention.**").See, MPEP 2107.01(IV), quoting In re Kirk (emphasis added).

Therefore, claims 1-15 are rejected on this basis.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Blasko et al 6,466,928 B1; dated 15 October 2002; class 706; subclass 046). Specifically:

Claim 1

Claim 1's "an issue component for identifying the issues to be resolved;" is anticipated by Blasko et al, Fig. 3, element 305.

Claim 1's "an inquiry component for facilitating collection of client information relevant to said issue component to facilitate definition of said issue component;" is anticipated by Blasko et al, Fig. 3, element 370.

Claim 1's "a knowledge base comprising data and information for facilitating assessment of said client information; and" is anticipated by Blasko et al, claim 7, where it recites: "7. The method of claim 1 further including the step of storing the proposal information in a **database**."

Claim 1's "a solution base for compiling assessments and recommendations from said knowledge base and for reporting said assessments and said recommendations to a client; and" is anticipated by Blasko et al, Fig. 3, element 355.

Claim 1's "a network for communicating said client information to said knowledge base and for communicating, said assessments and said recommendations to the client." is anticipated by Blasko et al, col. 12, lines 20-29, where it recites:

> FIG. 2 is a diagram of a system that can be used to carry out the Idea Development Process. Monitor 20 provides the principal display interface with the IG, and keyboard 21 and mouse 22 allow the IG to provide inputs to system a processing unit 23. Processing unit 23 also includes a CPU 24 and memory 25 containing programs and data. In the preferred embodiment,

> processing unit 23 is connected to a **network** 26 of other computers, and information collected about ideas is centrally stored in a database 27 (Idea Catalog).

Claim 2

Claim 2's "A system according to claim 1, wherein said knowledge base comprises an artificial intelligence engine for assessing said client information, said artificial intelligence engine configured for comparing an issue with an existing issue within a database to determine if similar, and thus provide a recommendation associated with said existing issue, and for breaking down said issue into smaller components for further comparison if said existing issue is not similar to said issue to thus provide a suggestion associated with said smaller components." is anticipated by Blasko et al, Abstract, where it recites:

> Disclosed are apparatus and methods for evaluating a business proposal in which a computer is used to perform the steps of presenting questions regarding the business proposal, using information gathered from responses to these questions to **determine a score for the proposal**, and then providing this information and score for evaluation of the proposal.

Claim 3

Claim 3's "identifying an ergonomic issue occurring at a client operation;" is anticipated by Blasko et al, Fig. 3, element 305.

Claim 3's "collecting information relevant to said ergonomic issue;" is anticipated by Blasko et al, Fig. 3, element 370.

Claim 3's "assessing said information collected to provide recommendations for resolving said ergonomic issue; and" is anticipated by Blasko et al, Abstract, where it recites:

> Disclosed are apparatus and methods for evaluating a business proposal in which a computer is used to perform the steps of presenting questions regarding the business proposal, using information gathered from responses to these questions to **determine a score for the proposal**, and then providing this information and score for evaluation of the proposal.

Claim 3's "providing said recommendations to a client," is anticipated by Blasko et al, col. 12, lines 20-29, where it recites:

> FIG. 2 is a diagram of a system that can be used to carry out the Idea Development Process. Monitor 20 provides the principal display interface with the IG, and keyboard 21 and mouse 22 allow the IG to provide inputs to system a processing unit 23. Processing unit 23 also includes a CPU 24 and memory 25 containing programs and data. In the preferred embodiment, processing unit 23 is connected to a **network** 26 of other computers, and information collected about ideas is centrally stored in a database 27 (Idea Catalog).

Claim 3's "wherein said step of assessing comprises using an artificial intelligence engine to provide said recommendations." is anticipated by Blasko et al, Abstract, where it recites:

> Disclosed are apparatus and methods for evaluating a business proposal in which a computer is used to perform the steps of presenting questions regarding the business proposal, using information gathered from responses to these questions to **determine a score for the proposal**, and then providing this information and score for evaluation of the proposal.

Claim 4

Claim 4's "A method according to claim 3, said method further comprises the step of prioritizing ergonomic risks determined from said steps of collecting information and assessing said information." is anticipated by Blasko et al, Abstract, where it recites:

> Disclosed are apparatus and methods for evaluating a business proposal in which a computer is used to perform the steps of presenting questions regarding the business proposal, using information gathered from responses to these questions to **determine a score for the proposal**, and then providing this information and score for evaluation of the proposal.

Claim 5

Claim 5's "identifying and defining a plurality of tasks comprising a corresponding job;" is anticipated by Blasko et al, Fig. 3, element 305.

Claim 5's "scheduling said plurality of tasks into a time framework;" is anticipated by Blasko et al, Fig. 3, element 370.

Claim 5's "defining technical actions of any repetitive tasks within said plurality of tasks;" is anticipated by Blasko et al, Fig. 3, element 370.

Claim 5's "providing a perceived exertion value associated with said repetitive tasks; and" is anticipated by Blasko et al, col. 10, lines 57-67, where it recites:

> Meritorious ideas are represented by high ratings which, by the scoring algorithms discussed below, translate into increased distances between the origin and the points on the axes. Therefore, larger diamonds indicate stronger ideas in the discipline represented by the graph. An ideal idea would have relatively large diamond-shaped graphs in all four disciplines--marketing, business, technical, and human factors, as FIG. 1(a) shows. This graphical representation allows one to quickly scan these charts and verify by the shape of the diamond that all the scores from each category appear to be the same.

Claim 5's "analyzing said technical actions by capturing movement and positioning data associated with said repetitive tasks" is anticipated by Blasko et al, Fig. 3, element 370.

Claim 6

Claim 6's "developing a statement corresponding to said ergonomic issue to facilitate analysis by said artificial intelligence engine;" is anticipated by Blasko et al, Fig. 3, element 355.

Claim 6's "assessing a database of cases to identify at least one previous issue having information similar to said ergonomic issue;" is anticipated by Blasko et al, Fig. 3, element 310.

Claim 6's "providing a solution for said ergonomic issue corresponding to a previous solution to said at least one previous issue in the event that said at least one previous issue has information similar to said ergonomic issue;" is anticipated by Blasko et al, Fig. 3, element 315.

Claim 6's "redeveloping said statement to break down said statement into elements to facilitate identification of previous elements within a database being similar to said elements of said statement in the event that said at least one previous issue does not have information similar to said ergonomic issue; and" is anticipated by Blasko et al, Fig. 3, element 345.

Claim 6's "recommending solutions based on said cases having correspondence to said ergonomic issue." is anticipated by Blasko et al, Fig. 3, element 355.

Claim 7

Claim 7's "A method according to claim 6, wherein said steps of collecting information relevant to said ergonomic issue and assessing said information collected to provide recommendations comprise communicating said information and said recommendations over a network." is anticipated by Blasko et al, col. 12, lines 20-29, where it recites:

> FIG. 2 is a diagram of a system that can be used to carry out the Idea Development Process. Monitor 20 provides the principal display interface with the IG, and keyboard 21 and mouse 22 allow the IG to provide inputs to system a processing unit 23. Processing unit 23 also includes a CPU 24 and memory 25 containing programs and data. In the preferred embodiment, processing unit 23 is connected to a **network** 26 of other computers, and information collected about ideas is centrally stored in a database 27 (Idea Catalog).

Claim 8

Claim 8's "collecting data relating to at least one case;" is anticipated by Blasko et al, Fig. 3, element 305.

Claim 8's "determining whether a case in a database is similar to said at least one case, and providing a solution corresponding to said case if said case in said database is similar to said at least one case;" is anticipated by Blasko et al, Fig. 3, element 305.

Claim 8's "breaking down said at least one case into multiple problems if said case in said database is not similar to said at least one case; and" is anticipated by Blasko et al, Fig. 3, elements 370, 375, 380, and 385.

Claim 8's "assessing at least one of said multiple problems to determine whether a problem in said database is similar to said at least one of said Multiple problems, and providing a recommendation corresponding to said problem if said problem in said database is similar to said at least one of said multiple problems." is anticipated by Blasko et al, Fig. 3, element 345.

Claim 9

Claim 9's "A method according to claim 8, wherein said method further comprises assessing each of said multiple problems to determine whether at least one problem in said database is similar to said each of said multiple problems, and providing a recommendation corresponding to said at least one problem if said at least one problem in said database is similar to said at least one of said multiple problems." is anticipated by Blasko et al, Fig. 3, element 305.

Claim 10

Claim 10's "A method according to claim 8, wherein said step of determining whether a case in said database is similar to said at least one case comprises assessing whether said case within said database is similar within a margin of error to said at least one case." is anticipated by Blasko et al, Fig. 3, element 305.

Claim 11

Claim 11's "A method according to claim 10, wherein said margin of error is widened if said case in said database is not similar within a margin of error to said at least one case." is anticipated by Blasko et al, col. 12, lines 37-46, where it recites:

> FIG. 3 is a flowchart showing the preferred steps to implement this invention. After the program is started (step 300), the software asks whether the idea is new or existing (step; 305). If the idea exists, the system first loads the idea from the Idea Catalog (step 310) and places the IG in the phase last worked on (step 315). If the idea is new, the program presents the IG with a general information page (step 320), shown in FIG. 4, before proceeding with the Idea Qualification phase (step 325) and subsequent phases, as discussed below.

Claim 12

Claim 12's "A method according to claim 10, wherein said margin of error is reduced as said method receives additional cases and provides additional solutions." is anticipated by Blasko et al, Fig. 3, element 305.

Claim 13

Claim 13's "A method according to claim 8, wherein said step of assessing at least one of said multiple problems to determine whether said problem in said database is similar to said at least one of said multiple problems comprises assessing whether said problem in said database is similar within a margin of error to said at least one of said multiple problems." is anticipated by Blasko et al, Fig. 3, element 305.

Claim 14

Claim 14's "breaking down said at least one of said multiple problems into multiple elements if said problem in said database is not similar to said at least one of said multiple problems; and" is anticipated by Blasko et al, Fig. 3, elements 370, 375, 380, and 385.

Claim 14's "assessing at least one of said multiple elements to determine whether an element in said database is similar to said at least one of said multiple elements, and providing a suggestion corresponding to said element if said element in said database is similar to said at least one of said multiple elements." is anticipated by Blasko et al, Fig. 3, element 345.

Claim 15

Claim 15's "A method according to claim 8, wherein said method further comprises the step of constructing a new case and solution set from said recommendation corresponding to said at least one of said multiple problems." is anticipated by Blasko et al, Fig. 3, element 365.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Hatton (U.S. Patent Number 6,101,490; dated 08 August 2000; class 706; subclass 055) discloses a program for creating new ideas and solving problems.

B. Hatton (U.S. Patent Number 6,269,356 B1; dated 31 July 2001; class 706; subclass 055) discloses a program for creating new ideas and solving problems.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Wilbert L. Starks, Jr. whose telephone number is (703) 305-0027.

Alternatively, inquiries may be directed to the following:

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WLS

12 December 2003

Wilbert L. Starks, Jr.
Primary Examiner
Art Unit - 2121